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IN THE COURT OF APPEALS OF INDIANA

AMANDA J. CROSE,)
Appellant-Defendant,))
vs.) No. 18A04-0711-CR-627
STATE OF INDIANA,)
Appellee-Plaintiff.)

APPEAL FROM THE DELAWARE CIRCUIT COURT The Honorable Richard A. Dailey, Judge Cause No. 18C02-0603-FD-66

June 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Amanda J. Crose appeals the revocation of her probation and raises one issue, which

we restate as whether the trial court was required to advise her of the possible penalties she may receive before she admitted to violating her probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 20, 2006, Crose pled guilty to operating while intoxicated ("OWI") as a Class A misdemeanor, in exchange for the dismissal of two other charges. The guilty plea constituted her second OWI conviction. The trial court sentenced Crose to two years incarceration, all of which was suspended to probation. Pursuant to the plea agreement, Crose was to be placed on probation and "subject to standard terms and conditions of probation, including but not limited to, payment of probationary user fees." *Appellant's App.* at 25. Additionally, Crose's driver's license was suspended for 180 days, and she was ordered to complete a substance abuse program and pay all fines and court costs. *Id.* at 28.

On June 26, 2007, the State petitioned to revoke Crose's probation claiming that she had tested positive for marijuana, had failed to maintain contact with Meridian Services, and had failed to pay probationary fees, all in violation of her probation. The trial court acknowledged the first two violations and ordered Crose's probation revoked and that she serve the previously suspended two-year sentence. Crose now appeals.

DISCUSSION AND DECISION

When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. *Sanders v. State*, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005),

¹ See IC 9-30-5-1(b).

trans. denied. Probation is a favor granted by the State, not a criminal defendant's right. *Id.* However, once the State grants that favor, it cannot simply revoke the privilege at its discretion. *Id.* Because probation revocation does not deprive a defendant of his absolute liberty, but only his conditional liberty, he is not entitled to the full due process rights afforded to a defendant in a criminal proceeding. *Piper v. State*, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), *trans. denied*.

Probation revocation is a two-step process. Sanders, 825 N.E.2d at 957. First, the court must make a factual determination that the probationer violated a probation condition. *Id.* If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. Id. Indiana has codified the due process requirements for probation revocation proceedings through IC 35-38-2-3, which requires an evidentiary hearing on the revocation and allows the probationer to confront and cross-examine opposing witnesses, and to be represented by counsel. Sanders, 825 N.E.2d at 957; see also IC 35-38-2-3(d), (e). When a probationer admits the violations, the procedural due process safeguards and an evidentiary hearing are not necessary. Sanders, 825 N.E.2d at 957. Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Id.* In making the determination of whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. *Id.* If a probationer has violated a condition of probation at any time before the probationary period is over, the trial court may order the execution of the probationer's suspended sentence. IC 35-38-2-3(g).

The issue before us is whether the trial court was required to inform Crose of the possible penalties that may be imposed before she voluntarily admitted to a probation violation.

In *Medicus v. State*, 664 N.E.2d 1163, 1164 (Ind. 1996), our Supreme Court set forth the procedural and substantive due process rights of those probationers facing a revocation of probation. Those rights include 1) written notice of the claimed violations; 2) disclosure of the evidence against her; 3) the opportunity to be heard and to present witnesses and evidence; 4) a limited right to confront and cross-examine witnesses; 5) a neutral and detached fact-finder; and 6) a written statement of the reasons for revocation. Our Supreme Court did not include the right to be advised of the possible penalties that can result from a violation.

This court recently decided in *Williams v. State*, 883 N.E.2d 192, 195 (Ind. Ct. App. 2008), that a probationer was not entitled to a court advisement of her right against self incrimination at a change of placement hearing prior to her admitting a violation of the Adult Day Reporting Program ("ADRP") rules. The *Williams* court quoted *Bussberg v. State*, 827 N.E.2d 37, 41 (Ind. Ct. App. 2005), stating that, "just as there is no right to a jury trial before probation may be revoked, neither is the privilege against compelled self-incrimination available to a probationer." 883 N.E.2d at 195. The *Williams* court concluded, "that the trial court did not err when it did not advise Williams of the possible effect that her admission to the ADRP violation could have at a subsequent probation violation hearing." *Id.*; *see also Parker v. State*, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997) (the civil nature of a probationary proceeding binds defendant to actions of there attorney).

The same reasoning applies here.

Crose claims that the line of cases holding that a defendant is entitled to be advised of the consequences of pleading guilty to a crime is applicable to probationary revocation hearings. We do not agree. As we held in *Williams*, a probationer is not entitled to the same rights as a defendant at trial. Therefore, the trial court was not required to advise Crose of the consequences of her admission to a probation violation.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.